

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO.</b> _____
<b>v.</b>	:	<b>DATE FILED:</b> _____
<b>WAYNE A. MARCHO</b>	:	<b>VIOLATIONS:</b>
<b>SELECT VEAL FEEDS, INC.</b>	:	<b>21 U.S.C. §§ 331(a) and 333(a)(1)</b>
	:	<b>(Distribution of misbranded drugs:</b>
	:	<b>inadequate directions for use - 1 count)</b>
	:	<b>18 U.S.C. § 1505 (Obstruction of agency</b>
	:	<b>proceedings – 1 count)</b>
	:	<b>Notice of forfeiture</b>

**INFORMATION**

**COUNT ONE**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times material to this information:

1. Defendant WAYNE A. MARCHO was the owner and operator of a business that owned, raised, and slaughtered veal calves for human consumption. His business consisted of WAYNE A. MARCHO, a sole proprietorship; defendant SELECT VEAL FEEDS, INC., a corporation; and Marcho Farms, Inc., a corporation. Of these, defendants SELECT VEAL FEEDS, INC. and WAYNE A. MARCHO are involved with the growing and feeding of veal calves, collectively referred to here as “the Marcho Veal Business,” and headquartered in Franconia, Pennsylvania.

2. Defendant WAYNE A. MARCHO bought newborn veal calves, and contracted with approximately 200 farmers in Pennsylvania, Ohio, New York, and Maryland to raise these calves for the Marcho Veal Business. This business raised about 80,000 to 95,000

head of veal cattle each year. Once the calves reached about 2-4 months, the Marcho Veal Business transported them to its slaughterhouse owned by Marcho Farms, Inc., in Franconia, Pennsylvania, for slaughter and processing. The business then sold the veal meat for human consumption.

3. The Marcho Veal Business required its contract growers to care for the veal calves under its direction and control, including the use of a specific feeding program for the calves. This feeding program directed the growers to feed the calves a liquid milk replacer, together with supplements and drugs, according to a detailed schedule.

4. Defendant SELECT VEAL FEEDS, INC. provided the contract growers with all of the nutrition, supplements and drugs called for in the Marcho Veal Business's feeding program. Defendant SELECT VEAL FEEDS, INC. produced its own veal feed for the business, and stored the feed, supplements, and drugs in its warehouse in Franconia.

5. Included among the supplements and drugs required by the Marcho Veal Business feeding program were regular doses of formaldehyde and potassium permanganate. Formaldehyde was used to prevent and treat scours (an intestinal illness common among veal calves). Potassium permanganate was intended to bind to iron in the calves' meat to produce the light color valued by customers.

6. The Food and Drug Administration ("FDA") regulated the distribution of drugs in interstate commerce, and the safety of food for American consumers. The FDA did this primarily by administering the Food, Drug, and Cosmetic Act ("FDCA"). The United States Department of Agriculture, and state Departments of Agriculture, regulated how cattle are raised, slaughtered, and processed.

7. Formaldehyde and potassium permanganate were drugs within the meaning of the FDCA, which defined “drugs” as “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals,” or “articles (other than food) intended to affect the structure or any function of the body of man or other animals.” 21 U.S.C. § 321(g)(1)(B) and (C).

8. The FDCA required that drugs moving in interstate commerce be accompanied by labeling, approved by the FDA, which described the doses, uses, and conditions for which the drug was intended. A person who caused an article or substance to move in interstate commerce, intending that the article or substance be used as a drug, but without the proper labeling for its use, caused a misbranded drug to be introduced into interstate commerce, in violation of the FDCA.

9. Defendants WAYNE A. MARCHO and SELECT VEAL FEEDS, INC. caused the drugs formaldehyde and potassium permanganate to be shipped to their growers, intending that the growers use those substances as drugs, and without the proper labeling or directions for that use.

10. Formaldehyde and potassium permanganate also constituted “prescription drugs” under the FDCA, which classified as prescription drugs for animals those drugs which, because of their toxicity or other potentiality for harmful effect, or the method of their use, or the collateral measures necessary for their use, were not safe except under the professional supervision of a licensed veterinarian. Prescription drugs for animals may only be dispensed upon the lawful order of a properly licensed veterinarian, issued in the course of the veterinarian’s professional practice, with a proper veterinary-client-patient relationship with the

affected animals.

11. The Marcho Veal Business employed a part-time veterinarian, who was licensed to practice veterinary medicine in Pennsylvania, but not in New York or Ohio during the relevant years. This veterinarian thus did not have a valid veterinary-patient-client relationship with the Marcho Veal Business's veal calves for purposes of the business's protocols requiring the use and intending the use of formaldehyde and potassium permanganate.

12. From in or about 1998 through in or about May 2005, in the Eastern District of Pennsylvania and elsewhere, defendants

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introduced into interstate commerce, and caused the introduction into interstate commerce, of quantities of formaldehyde, a drug within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321(g), which were misbranded because the defendants shipped and caused the shipment of these drugs to their growers without the proper labeling, intending that the growers administer these drugs to the Marcho Veal Business's veal calves.

In violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

## **COUNT TWO**

1. Paragraphs 1 through 11 of Count One are incorporated here.
2. In approximately January 2004, the FDA undertook an inspection at the Marcho Veal Business. On January 12, 2004, FDA Consumer Safety Officers and an inspector from the Pennsylvania Department of Agriculture inspected the premises of defendant SELECT VEAL FEEDS, INC.
3. During the inspection, the officers saw two pallets of formaldehyde solution. Defendant SELECT VEAL FEEDS, INC. and its representatives knew that the Marcho Veal Business's feeding protocols required the routine feeding of formaldehyde to the veal calves. In response to questions about this formaldehyde, however, representatives of defendant SELECT VEAL FEEDS, INC. made false and misleading statements intending to convince the inspectors that the formaldehyde was not being fed to the business's veal calves.
4. On or about January 15, 2004, in response to concerns raised by the inspectors about the use of formaldehyde and the feeding of the veal calves, representatives of defendant SELECT VEAL FEEDS, INC. made further false and misleading statements in written affidavits, again intending to convince the inspectors that the formaldehyde was not being fed to the business's veal calves. Representatives of defendant SELECT VEAL FEEDS, INC. also provided the inspectors with a document purporting to represent the entire Marcho Veal Business feeding protocols, but which did not mention formaldehyde, again intending to convince the inspectors that the veal business did not routinely feed this drug to its veal calves.
5. Representatives of defendant SELECT VEAL FEEDS, INC., through these false, misleading, and fraudulent representations, intended to obstruct a legitimate

FDA inspection undertaken to protect the health and safety of consumers.

6. In or about January 2004, in the Eastern District of Pennsylvania,  
defendant

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corruptly obstructed and impeded, and endeavored to obstruct and impede the due and proper administration of the law under which a pending proceeding was occurring before a department or agency of the United States, that is, an inspection being conducted by the Food and Drug Administration to administer the Food, Drug and Cosmetic Act.

In violation of Title 18, United States Code, Section 1505.

## **NOTICE OF FORFEITURE**

### **THE UNITED STATES FURTHER CHARGES THAT:**

1. As a result of the violation of Title 21, United States Code, Sections 331(a) and 333(a)(1) set forth in this information, defendants

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shall forfeit to the United States of America any quantities of formaldehyde, which between 1998 and May 2005 were misbranded when introduced into or while in interstate commerce, or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of Title 21, United States Code, Section 331, be introduced into interstate commerce.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property subject to forfeiture, that is \$100,000.

All pursuant to Title 21, United States Code, Sections 334 and 853, and Title 28,  
United States Code, Section 2461(c).

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**MICHAEL L. LEVY**  
**UNITED STATES ATTORNEY**